U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE H. ALEXANDER and U.S. POSTAL SERVICE,
NEWBURGH POST OFFICE, Cleveland, Ohio

Docket No. 97-597; Submitted on the Record;
Issued January 5, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has more than a 65 percent permanent impairment of the left lower extremity, for which he has already received a schedule award.

The Board has duly reviewed the evidence of record in this appeal and finds that appellant does not have more than a 65 percent permanent impairment of the left lower extremity, for which he has received a schedule award.

On May 31, 1977 appellant, then a letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 20, 1977 he injured his left ankle and foot when he made a misstep while going downstairs. Appellant stopped work on May 21, 1977 and returned to a light-duty job on August 10, 1982.[1]

The Office of Workers' Compensation Programs accepted appellant's claim for a left ankle sprain, and authorized arthroscopy and meniscectomy of the left knee.

By letter decision dated October 9, 1979, the Office granted appellant a schedule award for a 65 percent permanent impairment of the left lower extremity. Appellant received compensation during the period September 13, 1979 through April 15, 1983.

In response to its January 29, 1993 letter advising appellant to submit a medical report from his physician to determine entitlement to an additional schedule award, the Office received a March 5, 1993 medical report from Dr. Barry H. Brooks, an internist and appellant's treating physician, revealing that appellant had a 20 percent impairment of the left leg based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. By memorandum dated March 19, 1993, the Office advised an Office medical adviser to review Dr. Brooks' medical report and to determine the extent of appellant's impairment based on the

[1] Appellant retired from the employing establishment.

third edition of the A.M.A., *Guides*. The Office medical adviser reviewed Dr. Brooks' report and determined that appellant had a 58 percent permanent impairment of the left lower extremity and that appellant had reached maximum medical improvement on March 5, 1993.

By letter dated March 30, 1993, the Office advised appellant that he had no increased impairment of the left leg based on Dr. Brooks' medical report.

In a telephone conversation with the Office on February 2, 1994, appellant requested an increase in his schedule award. By letter dated February 2, 1994, the Office advised appellant to make an appointment with his physician to determine any increased impairment based on the third edition of the A.M.A., *Guides*.

In a July 18, 1994 letter, Dr. Laurence H. Bilfield, a Board-certified orthopedic surgeon, requested that the Office authorize an outpatient arthroscopy to be performed on appellant's left knee.

In a June 13, 1994 medical report, Dr. Ignatius Vidu, appellant's treating physician, indicated that appellant had a 78 percent permanent impairment of the lower left extremity based on the third edition of the A.M.A., *Guides*. In a July 28, 1994 memorandum, the Office advised an Office medical adviser to review Dr. Vidu's June 13, 1994 medical report and Dr. Bilfield's July 18, 1994 letter to determine the extent of appellant's impairment based on the third edition of the A.M.A., *Guides*. The Office medical adviser reviewed Dr. Vidu's report and Dr. Bilfield's letter, and recommended in a July 29, 1994 medical report that the Office authorize Dr. Bilfield's request for arthroscopy. The Office medical adviser stated that arthroscopy would probably help appellant and that he would reevaluate the extent of appellant's impairment after his recovery. By letter dated August 8, 1994, the Office authorized Dr. Bilfield's request.

Subsequent to appellant's August 23, 1994 arthroscopic surgery, Dr. Bilfield submitted a January 30, 1995 medical report noting his findings on physical examination. In a February 28, 1995 memorandum, the Office advised the Office medical adviser to review Dr. Bilfield's medical report to determine the extent of appellant's impairment based on the fourth edition of the A.M.A., *Guides*. The Office medical adviser reviewed Dr. Bilfield's report and opined in a March 1, 1995 medical report that appellant had a 73 percent loss of use of the left lower extremity based on the fourth edition of the A.M.A., *Guides*.

In a March 9, 1995 memorandum, the Office advised the Office medical adviser to use the first edition of the A.M.A., *Guides* to determine the extent of appellant's impairment noting that where a claimant seeks an additional schedule award for further deterioration of a listed member without additional employment exposure or additional injury, the claim should be reviewed using the formula or edition of the A.M.A., *Guides* in use at the time of the original Office decision. In a March 10, 1995 medical report, the Office medical adviser opined that appellant had a 49 percent loss of use of the left lower extremity based on the first edition of the A.M.A., *Guides*.

By decision dated June 19, 1995, the Office found that appellant was not entitled to an additional schedule award for the loss of use of the left lower extremity inasmuch as he had already received a schedule award for a 65 percent permanent impairment.

In a June 29, 1995 letter, appellant, through his counsel, requested an oral hearing before an Office representative. By decision dated July 3, 1996, the hearing representative affirmed the Office's June 19, 1995 decision.

In an October 8, 1996 letter, appellant requested reconsideration of the hearing representative's decision accompanied by medical evidence. By decision dated October 28, 1996, the Office denied modification of its prior decisions.

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing regulation,[3] set forth the number of weeks of compensation to be paid for permanent loss, or loss of use of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss of use.[4] However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[5]

In his January 30, 1995 medical report, Dr. Bilfield noted his findings on physical examination of appellant's left knee. Specifically, he noted that appellant had very definite medial joint line tenderness and crepitus with some limited motion. Dr. Bilfield stated that appellant flexed to about 80 degrees and extended only to 20 degrees. He further stated that appellant's left ankle also had limited motion with only 10 degrees of dorsiflexion, 20 degrees of plantar flexion, 0 degrees of inversion and 0 degrees of eversion. Additionally, Dr. Bilfield stated that appellant had some subjective sensory loss around the arthroscopic portholes in and around his knee and very definite pain in both his knee and ankle.

The Office medical adviser, using Dr. Bilfield's findings, determined that knee flexion resulted in a 25 percent loss and that extension resulted in a seven percent loss totaling a 32 percent loss. The Office medical adviser further determined that ankle dorsiflexion resulted in a 4 percent loss, plantar flexion resulted in a 7 percent loss, and that inversion and eversion each resulted in a 0 percent loss totaling a 20 percent loss. The Office medical adviser then determined that there was definite pain and tenderness in the knee and the peroneal nerve had a maximum of five percent loss. The Office medical adviser noted that there was no grading, therefore, he estimated a 25 percent loss and determined that 25 percent of 5 percent resulted in a 1 percent loss. Additionally, the Office medical adviser stated that there was definite pain in the ankle and that the medial plantar had a 5 percent maximum loss, the internal plantar had a 5

[2] 5 U.S.C. §§ 8101-8193; *see* 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.304.

[4] 5 U.S.C. § 8107(c)(19).

[5] *See James J. Hjort*, 45 ECAB 595 (1994); *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

percent maximum loss, totaling a 10 percent maximum loss. The Office medical adviser noted that there was no grading, therefore, he estimated a 25 percent loss and determined that 25 percent of 3 percent totaled a 3 percent loss. The Office medical adviser stated that there was no atrophy and that a medial meniscectomy was not listed in the first edition of the A.M.A., *Guides*. Using the combined values table, the Office medical adviser added the losses to calculate a 49 percent loss of use of the left lower extremity. The Office medical adviser concluded that appellant reached maximum medical improvement on January 26, 1995. The Board finds that the Office medical adviser properly determined that appellant had a 49 percent permanent impairment of the left lower extremity based on the first edition of the A.M.A., *Guides*.[6]

In support of his request for reconsideration, appellant submitted Dr. Bilfield's July 23 and August 29, 1996 medical treatment notes regarding the treatment of his left knee and left ankle. Further, appellant submitted a July 23, 1996 x-ray report of his left knee and left hip from Dr. Phillip H. Weiss, a Board-certified nuclear radiologist. Regarding the left knee, Dr. Weiss indicated considerable narrowing of the medial joint compartment on the left side with slight to moderate narrowing of the medial joint compartment on the right side, no definite evidence of fracture or dislocation and no evidence of radio-opaque loose body or joint effusion. Regarding the left hip, Dr. Weiss indicated no evidence of fracture or dislocation, that both hip joint spaces appeared relatively well maintained, that there was no significant arthritic change, that the bony pelvis appeared intact and that multiple metal clips were present in the pelvis on both sides. Additionally, appellant submitted an August 28, 1996 hospital emergency report revealing that he had arthritis and possible gout of the left ankle. Appellant also submitted Dr. Weiss' August 29, 1996 x-ray report of his left ankle indicating no evidence of a fracture or dislocation, a few tiny calcifications between the medial malleolus and the talus. Dr. Weiss stated that he was not certain whether they were projected from soft tissues or related to the joint itself possibly representing chrondrocalcinosis. A September 10, 1996 magnetic resonance imaging (MRI) report from Dr. Eric C. Bourekas, a neuroradiologist, regarding appellant's left knee revealed abnormal configuration to the anterior and posterior horns of the medial meniscus which was probably related to prior surgery, degenerative type signal within the anterior and posterior horns of the lateral menisci, small joint space effusion, and several subchondral cysts with evidence of cortical sclerosis and joint space narrowing primarily of the medial compartment which were indicative of degenerative disease. Dr. Bilfield's medical treatment notes, Dr. Weiss' x-ray reports, the hospital emergency report and MRI report have no probative value because they failed to address whether appellant had any impairment based on the first edition of the A.M.A., *Guides*.

In support of his request for reconsideration, appellant submitted Dr. Bilfield's August 15, 1996 medical report. In this report, Dr. Bilfield opined that the increased pain and gait dysfunction related to appellant's knee had caused at least an equivalent of approximately a five percent increase in appellant's disability. He further opined that eventually appellant would need a total knee replacement because his condition was worsening. Dr. Bilfield's report failed to indicate that he utilized the first edition of the A.M.A., *Guides* in determining that appellant

[6] The Office medical adviser properly applied the first edition of the A.M.A., *Guides*, inasmuch as appellant did not claim an additional schedule award based on additional employment exposure or additional injury; *see Roy L. Brandt*, 41 ECAB 569 (1990).

had a five percent increase in his disability. Therefore, his report is insufficient to establish that appellant is entitled to an additional schedule award.

Inasmuch as the Office medical adviser properly applied the first edition of the A.M.A., *Guides* and the impairment rating was less than the 65 percent permanent impairment award previously granted by the Office, the medical evidence of record does not support a finding that appellant is entitled to an additional schedule award at this time.

The decisions of the Office of Workers' Compensation Programs dated October 28 and July 3, 1996 are hereby affirmed.

Dated, Washington, D.C.
January 5, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member